THE DEEN INITIATIVE

Estate Planning & the utlisation of Trust and Awqaf

Securing Your Legacy in Dunyā and Ākhirah

About the Presenter

Ridhwaan Khan
CA(SA)
HDip (Tax), HDip (VAT)

THE DEEN INITIATIVE

- Qualified Chartered Accountant (23 years experience)
- Post Graduate certificate in Advanced Taxation (Honours)
- Post Graduate certificate in Advanced VAT (Honours)
- Member of the South African Institute of Chartered Accountants
- VAT specialist & Technical advisor for SAICA – Eastern Region Tax Committee
- Member of the Institute of Internal Auditors South Africa
- Registered SARS Tax Practitioner (PR-0008992)
- Tax Trainer & Advisor to Auditor General South Africa (AGSA)
- VAT & PAYE project advisor for KZN Provincial Treasury
- Currently serves as Tax advisor to more than 100 tax exempt entities
- Extensive Tax and VAT consulting experience across Non-Profit, Corporate, Banking & Insurance, Education & Public Sectors
- +20 years' Income Tax, VAT & PAYE experience
- +3 years' audit experience
- +2 years' Computer & Internal Audit experience

Overview - Points to cover

THE DEEN INITIATIVE

01 Overview of the Legal Process after Death: Estate Administration

02 What is Estate Planning?

03 Top 10 Estate Planning tips

04 The concept and mechanics of a Family Trust in Estate Planning

05 Advantages and Pitfalls of Trusts in Estate Planning

06 Introduction to Waqf

07 The mechanics of a Waqf in Islamic Estate Planning

08 Islamic Estate planning example – using a Waqf

09 Historical power of Waqf

Overview of the Legal Process after Death: Estate Administration

THE DEEN INITIATIVE

Estate Comes into Existence

Secure Property & Gather Documents

Is there a Will?

WITH WILL

Follow the Will

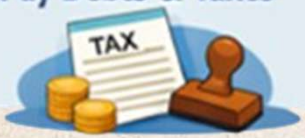
NO WILL - INTESTATE

Apply Succession Law

Appoint Executor

Identify Assets & Debts

Pay Debts & Taxes



Get Approvals for Distribution

Transfer Assets to Heirs

Close the Estate

Estate Planning

THE DEEN INITIATIVE

Conventional

- Legal process of arranging assets and obligations
- Reducing or minimising the potential estate duty or potential capitals gains tax (CGT)
- Provision for dependants & heirs
- Ensuring orderly transfer of ownership
- **Wealth Preservation** – Protecting and growing the asset base for future generations and leaving a legacy in this world

Islamic

- **Act of worship (Ibadah)**
  - Fulfilling the farḍh of distributing wealth per Sharīʿah (which has determined fixed rights for distribution)
  - Bequest (Waṣiyyah) which is the will/wish of the deceased is limited to 1/3 of the Estate
- Creating a Legacy for eternity (and not only in this world)

Tools used for Estate Planning

- Wills
- Trusts
- Companies
- Charity
- Life insurance policies

- Conventional Tools
- Waqf

Top 10 Estate Planning Tips

THE DEEN INITIATIVE

1 Start Now — Don't Delay

2 Where to Start ? Get The Foundations right...

- Islamic Will
- Executor appointment
- Ulema/Professional guidance
- Local law compliance
- Estate Planning available
- Attach schedules (of assets + bequests)

3 Inform the Right People (Avoid a Secret Plan)

- Executor informed (document locations shared)
- Trusted family informed (document locations share)d
- Letter of wishes
- Charity intentions clarified

4 Build a Complete Asset Register (What You Own & Where It Sits)

- Master asset list
- Where held (banks, brokers)
- Properties / vehicles
- Policies / investments
- Assets in Trusts (Islamically yours)
- Assets held in others' names
- Business interests/ oint ownership structures

5 Record Debts & Religious Obligations

- Home loans & Vehicle finance
- Business debts
- Credit cards & Family (personal) loans
- Zakaah outstanding, Fasts / Fidya / Kaffarah

Top 10 Estate Planning Tips (continued)

THE DEEN INITIATIVE

6 Create an "Estate File" (physical copies + Digital)

- Estate folder (physical copies + digital)
- IDs & Nikah documents
- Title deeds, Policies, Loan agreements, Share certificates
- Password list (secure)
- Email / banking access
- Device passwords & PINs

7 Avoid "Name Lending" (Don't Park Assets in Other People's Names)

- Ownership risk (Legal vs "real" owner)
- Estate disputes
- Death/divorce risk
- Asset loss exposure
- Fix it early

8 Keep the Peace: Family Clarity & Written Proof

- Family meeting – Transparency (written minutes)
- Third-party advisors present
- Avoid surprises
- Document gifting clearly
- Fear of Allah and your akhirah be your guide

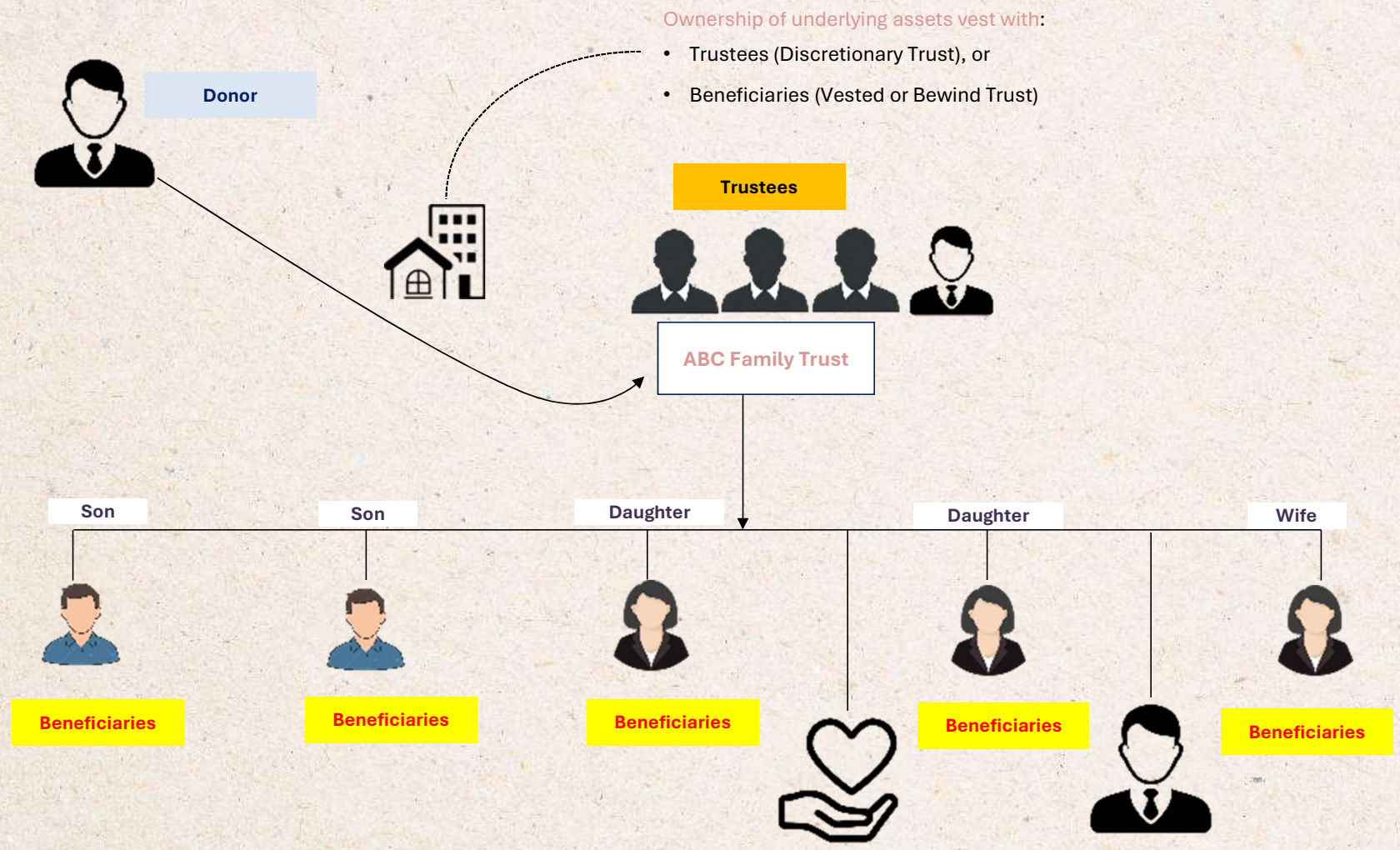
9 Prepare an "If I Pass Away" One-Page Instruction Sheet

- Emergency instructions
- Janazah preferences, Burial details
- Imam contact
- Executor details
- Where documents are, Letter of wishes

10 Review Annually & Update

The concept and mechanics of a Family Trust

THE DEEN INITIATIVE



Advantages of Trusts in Estate Planning

THE DEEN INITIATIVE

- Tax benefits - Freeze asset growth outside of one's personal estate
  - Estate-duty savings
  - Capital Gains Tax (CGT) saving
- No Executors Fees
- Longevity - (Protection and preservation of assets)
- Flexibility
- Continuity without executor delays
- Shield assets against Creditor claims

Other

- Income streaming to lower-rate beneficiaries (limited benefits)

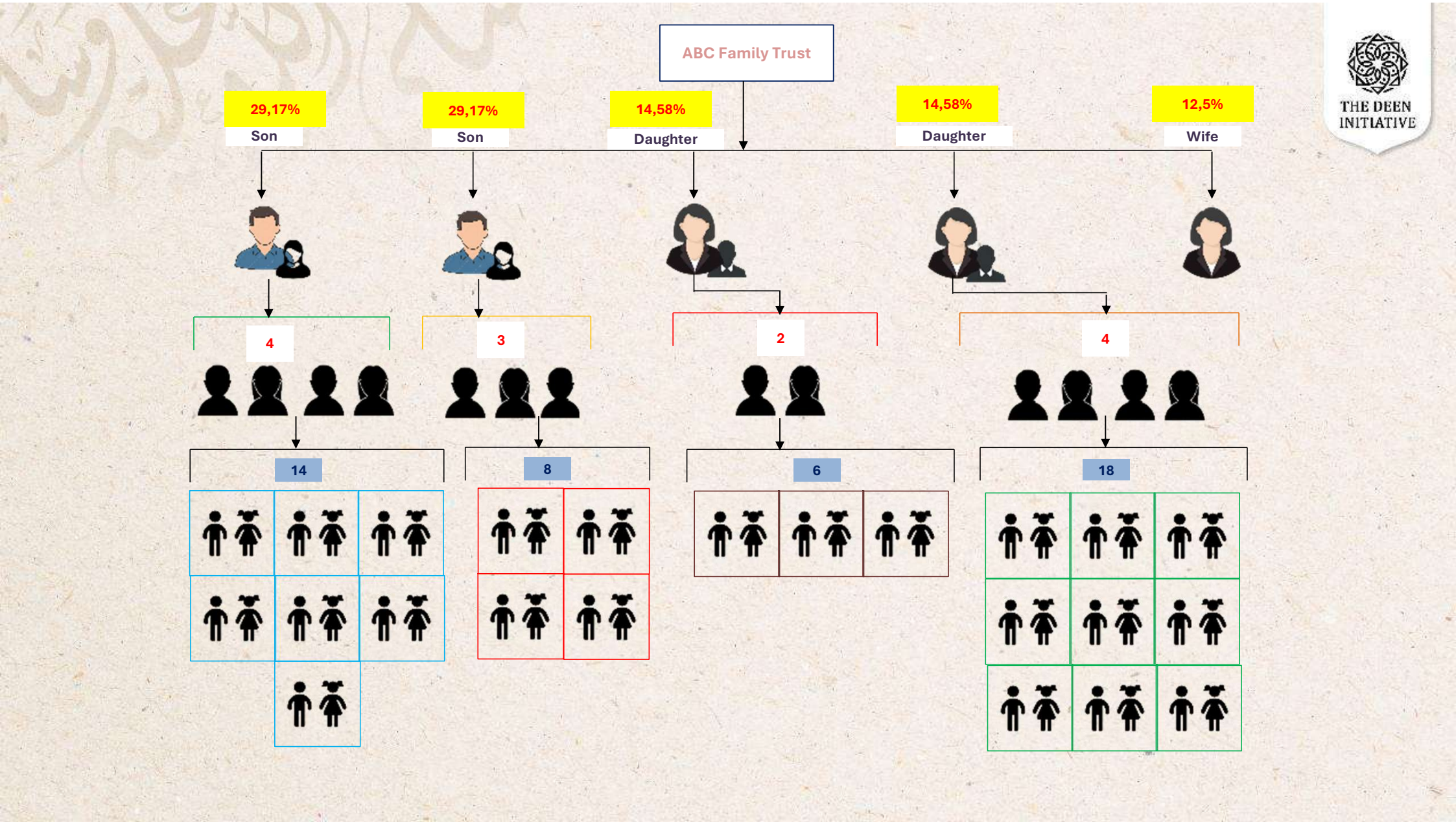
Pitfalls of Trust

THE DEEN INITIATIVE

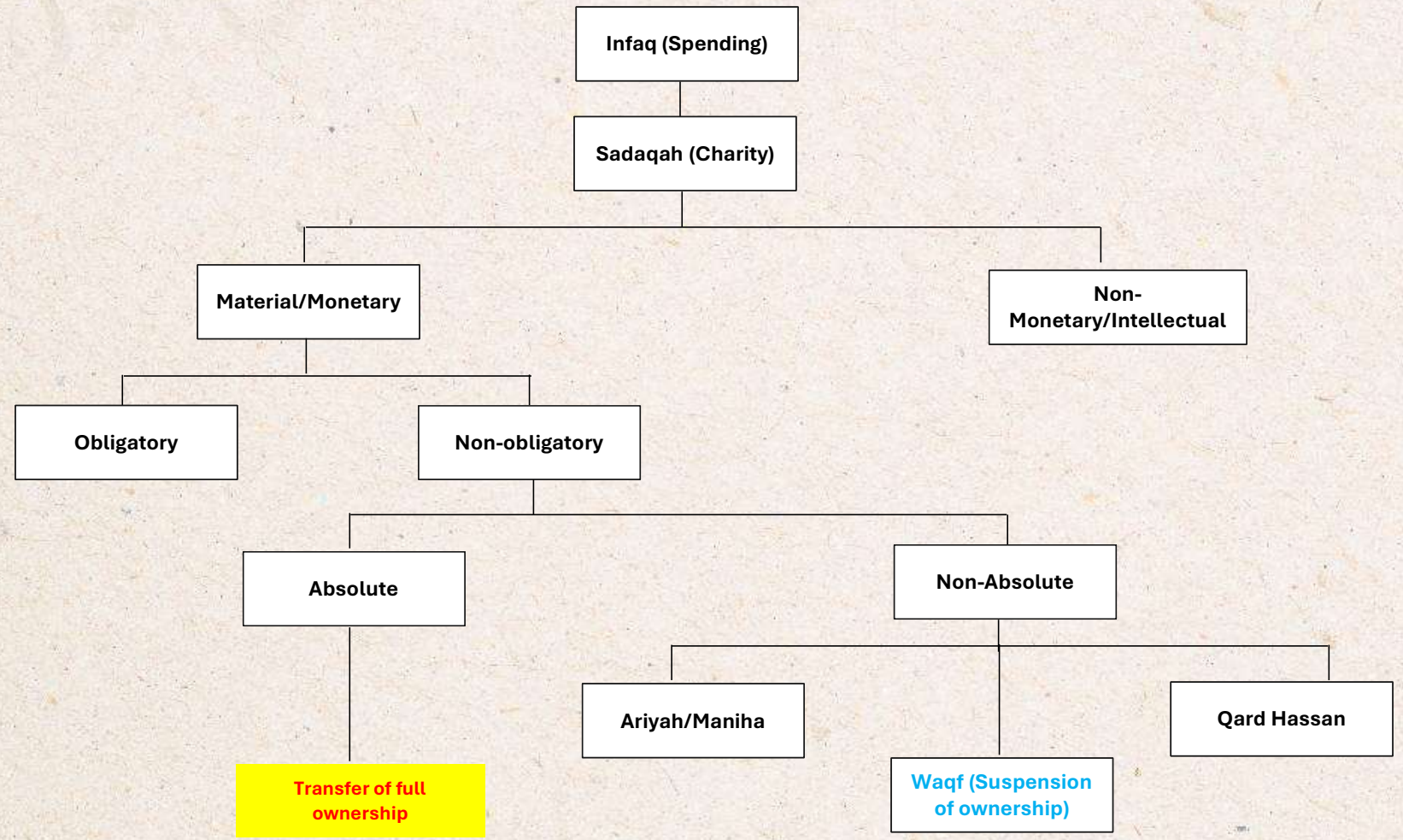
- Potential loss of control (Alter-ego risk if donor controls everything)
- Currently under SARS scrutiny and microscope
- Income Tax implications (Undistributed income taxed at 45 %) limiting possibility of retaining income in a Trust
- Complexity & Costs of Trust
- CGT on vesting of asset to beneficiaries or heirs

From an Islamic perspective

- Asset still part of Shari'ah estate if not islamically given (vested)


ABC Family Trust
29,17%
Son
29,17%
Son
14,58%
Daughter
14,58%
Daughter
12,5%
Wife
4
3
2
4
14
8
6
18

Understanding Waqf



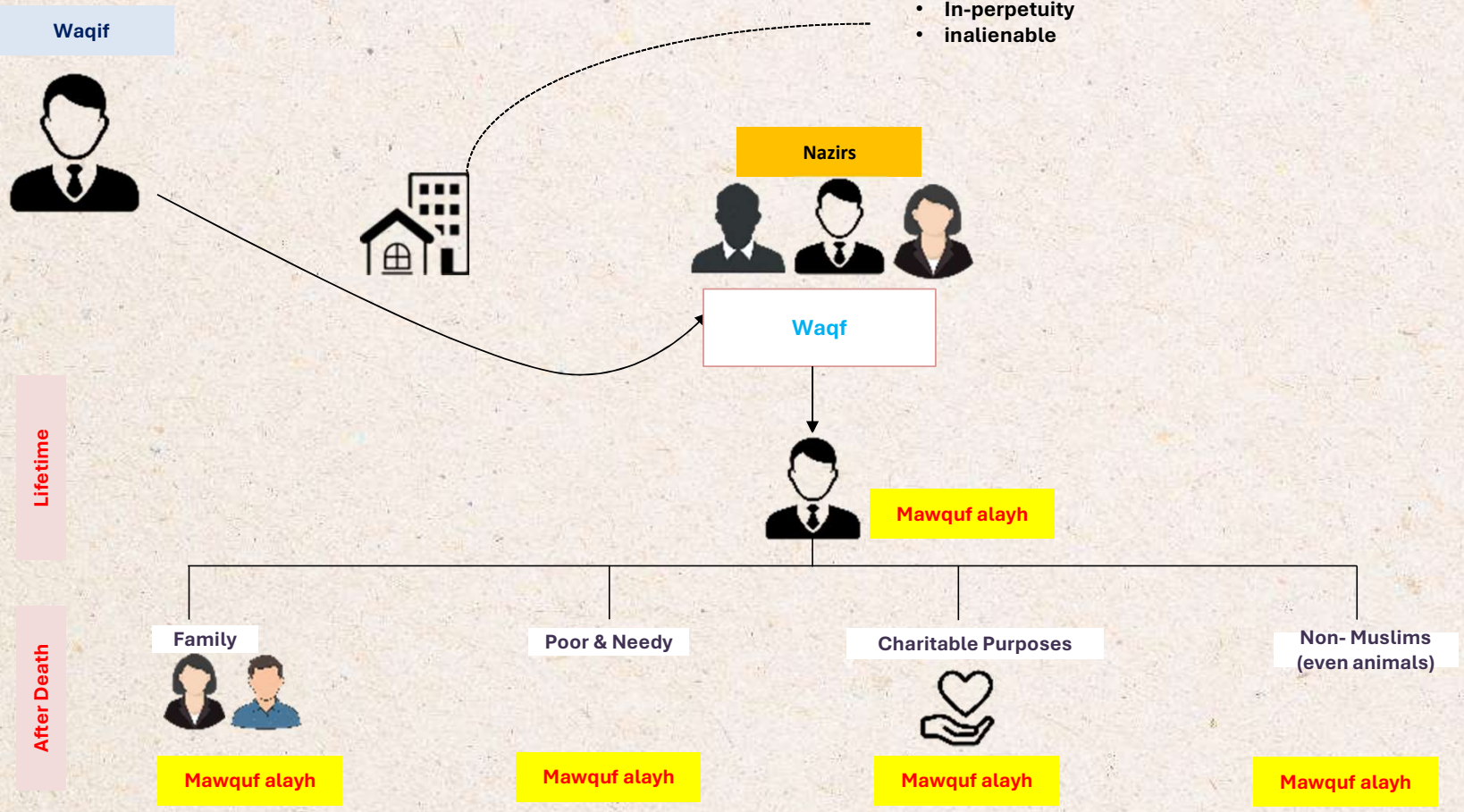
The concept and mechanics of a Waqf

THE DEEN INITIATIVE

- Righteous purpose (shariah-compliant)
- Righteous manner (not shariah-repugnance)
- Reward in Hereafter (with sincerity)

Mawquf - Ownership transfers to Allah Ṭa'ala:

- Irrevocable,
- In-perpetuity
- inalienable

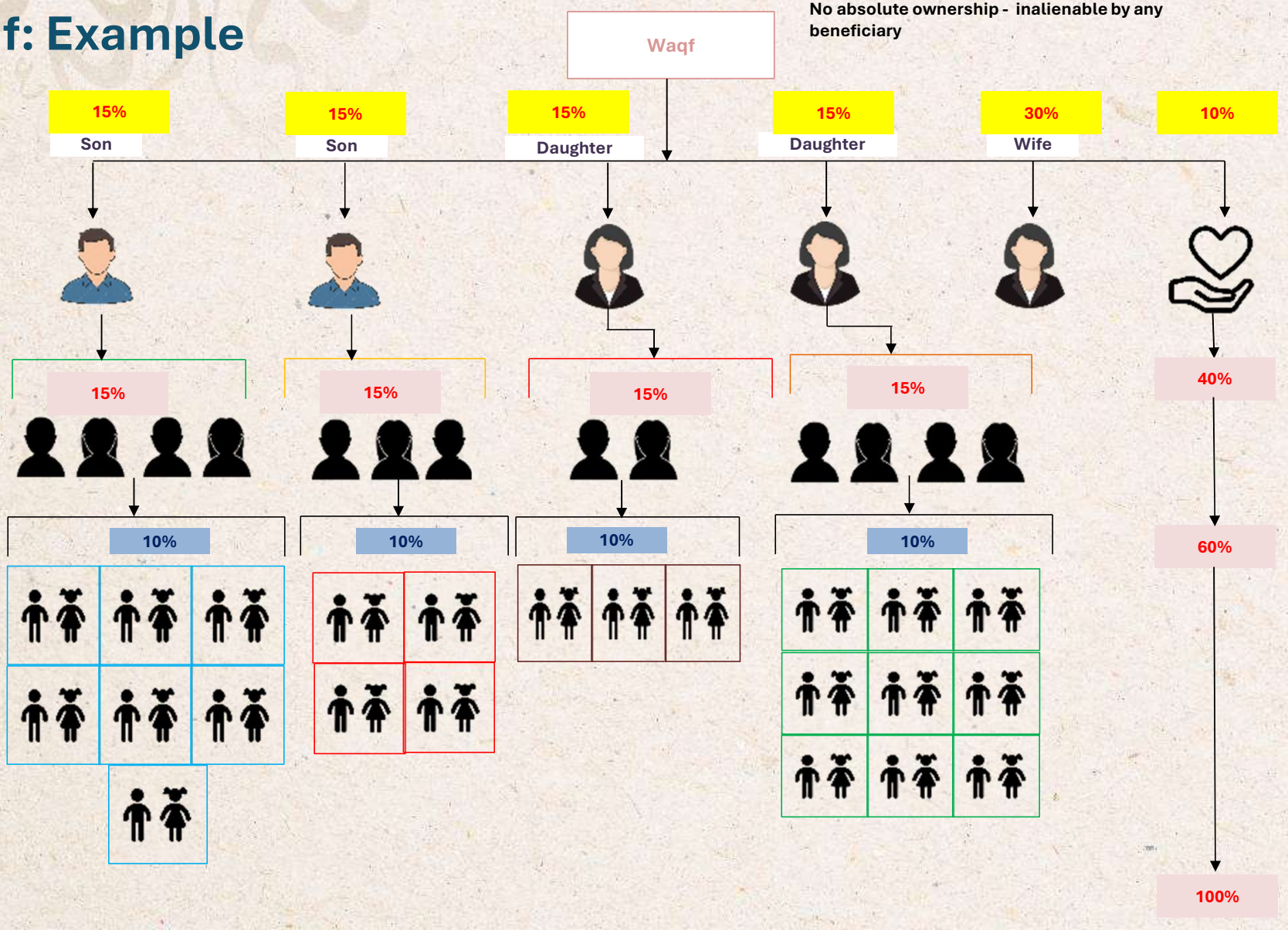


Waqf vs Family Trust

THE DEEN INITIATIVE

	Trusts	Waqf
Parties	Three parties (Donor, trustee and beneficiary)	Three parties (Waqif, Nazir and Mawquf alayh)
Separation of ownership (of underlying asset) vs usufruct	Applicable to discretionary Trust where ownership vest with Trustees	Ownership is suspended – Transferred to Allah Ta'ala
Main Objective	Various personal and/or business reasons	Is deemed as a means of Qurba (attaining pleasure of Allah) - an instrument of sadaqah
Purpose	Can be personal, family or charitable or a mix	Can be personal, family or charitable or a mix
Ownership	Ownership can be passed on to beneficiaries based on Trust Deed	The underlying assets are Irrevocable, In-perpetuity Inalienable.
Subject Matter	No real rules or limits imposed on what the subject matter can be.	Defined set of rules of what the subject matter (Mawquf) can and cannot be.
Ultimate beneficiary	Based on what's included in the Trust deed	Revert to charity once beneficiaries cease to exist or at a time stipulated in the waqf
Governance Framework	Common Law in South Africa	A religious institution which is governed by its own fiqh of rules derived from Shariah
Flexibility	Very flexible and efficient with very little or no restrictions	Very flexible however, the essence of Waqf lies in its religious identity, which cannot be compromised for the sake of efficiency.

Waqf: Example



Historic power of Waqf

THE DEEN INITIATIVE

- By the tenth century, **waqf superseded Zakat** as the primary wealth redistributive institution in Muslim societies
- At the end of the 19th century, almost **70%** of cultivable land in Turkey were under waqf
- In many other Muslim countries such as Tunisia and Egypt, **1/3rd and 2/3rd** of total lands was under waqf at the time of their colonisation.
- Awqaf was previously used to:
  - Fund hajj pilgrimage for the pious but financially weak
  - Pave streets and develop them
  - Supply wedding outfits to girls of poor families
  - Pay the cost of dishes broken by servants etc
  - Free prisoners
  - To feed birds during winter

Historic power of Waqf (continued)

THE DEEN INITIATIVE

"Thanks to the Waqfs that flourished during the Ottoman Empire, a person would have been born into a Waqf house, slept in a Waqf cradle, eaten and drunk from Waqf properties, read Waqf books, been taught in a Waqf school, received his salary from a Waqf administration, and when he died, placed in a Waqf coffin and buried in a Waqf cemetery"

During the Ottoman Era, according to Baskan (2002) in his famous quote:

"It is not an exaggeration to claim that the Waqf, or pious endowment created in perpetuity, has provided the foundation for much of what is considered Islamic civilization"

(Hennigan, 2004: xiii)